Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/10908/2014
IA/10913/2014

THE IMMIGRATION ACTS

Heard at Birmingham Employment Centre
On 13 October 2015

Decision and Reasons Promulgated
On 22 October 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE McCARTHY

Between

ABU ZAR KHAN (1)
ZARDA BEGUM (2)
(NO ANONYMITY ORDER)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Ali, instructed by Brys Immigration Consultants
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. On 20 February 2015, Upper Tribunal Judge Bruce granted permission to appeal against the decision and reasons statement of First-tier Tribunal Judge Hawden-Beal that was promulgated on 18 September 2014.

2. There was no application for anonymity in the First-tier Tribunal and there has been no application since the appeal was determined. I find there is no reason to make an anonymity order in the Upper Tribunal.

3. The appellants are husband and wife. Both are citizens of Pakistan and their dates of birth are respectively 4 December 1926 and 1 January 1934.

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4. The appellants were granted entry clearance on 21 March 2013 as visitors. They arrived in the UK on 6 April 2013 and their entry clearance acted as leave to enter until 21 September 2013. On 11 September 2013 they applied to vary their leave to be allowed to settle here outside the rules because of their age and health concerns. The Home Office refused these applications on 10 February 2014 and on the same day gave notice that variation of leave was refused and for the appellants to be removed by way of directions. It is against those decisions that the appellants appealed as they were entitled to do under s.82(1) of the Nationality, Immigration and Asylum Act 2002.

5. At the start of the hearing I asked Mr Mills and Mr Ali whether they thought Judge Hawden-Beal had properly considered paragraph 276ADE(1)(vi) of the immigration rules insofar as it requires an assessment as to whether there are very significant obstacles for a person to integrate into the country to which they would be removed.

6. During our discussion, Mr Mills acknowledged that this version of the rules applied to the appellants because of the proposed removal, which meant paragraph 400 of the immigration rules had to be considered. He pointed out that the earlier version of the rules which related to the ties a person might have to the country they would return also applied but only to the decisions to refuse to vary. Nothing turned on this complexity of immigration law because it was sufficiently clear from paragraph 22 of Judge Hawden-Beal's decision that she considered both versions.

7. Mr Mills submitted that integration cannot be understood to be a fixed or measurable threshold and that whether someone can be expected to integrate into a particular society will depend in many cases on their abilities and, in situations where their abilities are limited, for example because of health issues, on a range of factors including the availability of people to care for them so they can be accepted as part of the society in which they live.

8. Mr Ali accepted this approach and submitted that integration had to be viewed as a broad term. Where a person such as the appellants would be unable to live a safe life on their own in Pakistan, then there would be an issue of whether they could integrate. In this way safeguarding issues would be relevant in some cases to whether a person could integrate into a particular society. In addition, the presence of potential carers had to be assessed in relation to the particular society. By way of example, Mr Ali submitted that although the appellants had two daughters in Pakistan, neither could be expected to provide care to the appellants for cultural reasons and because of their family responsibilities to their husbands, their children and their parents in law.

9. Both Mr Mills and Mr Ali accepted that Judge Hawden-Beal did not approach the current version of paragraph 276ADE(1)(vi) in this manner and that this meant there had been no proper evaluation of the appellants' appeals under the immigration rules.

10. I should mention that neither representative sought to criticise the judge's approach. Mr Ali admitted that he had not directly approached the

appeals in this way although his arguments in the First-tier Tribunal did touch on some of these points. Mr Mills acknowledged that the Home Office defence of the decision did not fully explore the question of whether the appellants could integrate into Pakistan because of their health and age issues. However, he argued that the failure was immaterial because the appeal was bound to fail on human rights grounds.

11. I have considered the arguments relating to the human rights grounds. Judge Hawden-Beal found that the appellants had failed to show there was any need for her to examine article 8 directly. Mr Mills and Mr Ali agreed that the Court of Appeal did not say in Singh and Khalid v SSHD [2015] EWCA Civ 74 that there was an intermediary hurdle an appellant had to overcome to move from considering private and family life rights under the immigration rules to under article 8 directly. The issue was that the First-tier Tribunal was obliged to carry out a proportionality assessment. If that had been fully completed when considering the immigration rules, then it did not have to be repeated. But if it had not been fully completed when considering the immigration rules, a judge was required to complete it.

12. Mr Ali submitted that although Judge Hawden-Beal identified the relevant factors that needed to be considered in respect of article 8 proportionality, she did not make clear findings. I agree. The judge did not make clear findings in relation to the reasonableness of expecting the appellants' son to look after them if they returned to Pakistan, in relation to whether the appellants' daughters could be expected to look after them given the cultural issues, and whether it was reasonable to expect the appellants to return to Pakistan merely to submit adult dependent relative applications given their age and health concerns.

13. Having heard from the parties and having considered the evidence and arguments, I decided that the decision and reasons statement was infected with errors of law that required it to be set aside. I announced this at the hearing and invited Mr Ali and Mr Mills to share their views as to how the decision should be remade.

14. Mr Ali requested that the appeal be remitted to the First-tier Tribunal for a fresh hearing because of the degree of errors. He also reminded me that the appellants were vulnerable adults and further evidence needed to be sought to provide up to date information.

15. Mr Mills objected to remittal because the Upper Tribunal had directed that should an error of law be found then the Upper Tribunal would proceed to remake the decision itself. Mr Ali admitted that his solicitors had failed to comply with that direction.

16. Having considered both submissions I have decided that the appeal should be remitted for a fresh hearing in the First-tier Tribunal. This is because it is not the appellants' fault that they did not comply with directions. They are vulnerable adults and relied on the advice and support of others which did not materialise on this point. It would be unjust to proceed in such circumstances in the Upper Tribunal. In addition, I agree with Mr Ali that the errors are significant enough to make this a case which has to begin again.

17. For the sake of clarity, I make the following directions regarding the remitted hearing. Of course, these directions can be altered by the First-tier Tribunal.

    a. The remitted hearing can be before any First-tier Tribunal Judge other than Judge Hawden-Beal.

    b. The judge determining the remitted appeal will consider all issues raised in the grounds of appeal other than whether the appellants can meet the requirements of appendix FM relating to adult dependent relatives. It is accepted they cannot because such applications can only be made from overseas.

    c. The judge at the remitted hearing will focus on the principle issue, which are to decide if the appellants succeed under paragraph 276ADE or article 8 applied directly. The points discussed above will help the parties prepare for the remitted hearing.

    d. The appellants' solicitors should advise the First-tier Tribunal as soon as possible if an interpreter is required. An interpreter is unlikely to be required if the appellants are not to give oral evidence.

Decision

The decision and reasons statement of Judge Hawden-Beal contains an error of law and is set aside.

The appeal is remitted to the First-tier Tribunal for rehearing as per the above directions.

Signed Date

Judge McCarthy
Deputy Judge of the Upper Tribunal